

112TH CONGRESS
2D SESSION

S. 3048

To provide for a safe, accountable, fair, and efficient banking system, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2012

Mr. BROWN of Ohio (for himself and Mr. HARKIN) introduced the following
bill; which was read twice and referred to the Committee on Banking,
Housing, and Urban Affairs

A BILL

To provide for a safe, accountable, fair, and efficient banking
system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe, Accountable,
5 Fair, and Efficient Banking Act of 2012” or the “SAFE
6 Banking Act of 2012”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—As used in this Act—

9 (1) the term “appropriate Federal regulator”

10 means—

1 (A) the Board of Governors of the Federal
2 Reserve System (in this Act referred to as the
3 “Board”);

4 (B) the Comptroller of the Currency (in
5 this Act referred to as the “Comptroller”; or

6 (C) the Federal Deposit Insurance Cor-
7 poration (in this Act referred to as the “Cor-
8 poration”);

9 (2) the term “average total consolidated assets”
10 has the same meaning as in part 225 of title 12,
11 Code of Federal Regulations, as in effect on the date
12 of enactment of this Act, or any successor thereto;

13 (3) the term “FDIC-assessed deposits” means
14 the assessment base, as computed under part 327 of
15 title 12, Code of Federal Regulations, as in effect on
16 the date of enactment of this Act, or any successor
17 thereto;

18 (4) the term “tangible common equity” means
19 qualifying common stockholders’ equity plus retained
20 earnings;

21 (5) the term “liabilities” equals a financial com-
22 pany’s total assets less tier 1 capital;

23 (6) the term “nondeposit liabilities” means the
24 total assets of a bank holding company, less tier 1
25 capital, less FDIC-assessed deposits; and

(7) the term “tier 1 capital” has the same meaning as in part 225 of title 12, Code of Federal Regulations, as in effect on the date of enactment of this Act, or any successor thereto.

(b) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(1) FOREIGN NONBANK FINANCIAL COMPANY.—

The term “foreign nonbank financial company” means a company (other than a company that is, or is treated in the United States, as a bank holding company or a subsidiary thereof) that is—

(A) incorporated or organized in a country other than the United States; and

(B) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(2) U.S. NONBANK FINANCIAL COMPANY.—The term “U.S. nonbank financial company” means a company (other than a bank holding company or a subsidiary thereof) that is—

(A) incorporated or organized under the laws of the United States or any State; and

(B) substantially engaged in activities in the United States that are financial in nature

1 (as defined in section 4(k) of the Bank Holding
2 Company Act of 1956).

3 (3) NONBANK FINANCIAL COMPANY.—The term
4 “nonbank financial company” means a U.S.
5 nonbank financial company and a foreign nonbank
6 financial company.

7 **SEC. 3. CONCENTRATION LIMITS.**

8 (a) NATIONWIDE CONCENTRATION LIMITS.—Section
9 3(d) of the Bank Holding Company Act of 1956 (12
10 U.S.C. 1842(d)) is amended—

11 (1) in paragraph (2), by striking subparagraph
12 (A) and inserting the following:

13 “(A) NATIONWIDE CONCENTRATION LIM-
14 ITS.—No bank holding company may hold more
15 than 10 percent of the total amount of deposits
16 of insured depository institutions in the United
17 States.”; and

18 (2) by striking paragraph (5) and inserting the
19 following:

20 “(5) ENFORCED COMPLIANCE.—The Board
21 shall require any bank holding company having a de-
22 posit concentration in violation of this subsection to
23 sell or otherwise transfer deposit liabilities to unaf-
24 filiated firms to bring the company into compliance
25 with this subsection.”.

1 (b) TREATMENT OF LIABILITIES.—Section 14 of the
2 Bank Holding Company Act of 1956 (12 U.S.C. 1852)
3 is amended—

4 (1) in subsection (a), by striking paragraph (3)
5 and inserting the following:

6 “(3) the term ‘liabilities’ means—

7 “(A) with respect to a United States finan-
8 cial company—

9 “(i) the total assets of the financial
10 company, including all off-balance-sheet as-
11 sets, including financings of assets for
12 which the issuer has more than minimal
13 economic or reputational risks or rewards;
14 less

15 “(ii) the total regulatory capital of the
16 financial company;

17 “(B) with respect to a foreign-based finan-
18 cial company—

19 “(i) the total assets of the United
20 States operations of the financial company,
21 including all off-balance-sheet assets, in-
22 cluding financings of assets for which the
23 issuer has more than minimal economic or
24 reputational risks or rewards of the finan-
25 cial company; less

1 “(ii) the total regulatory capital of the
 2 United States operations of the financial
 3 company; and

4 “(C) with respect to an insurance company
 5 or other nonbank financial company supervised
 6 by the Board, such assets of the company as
 7 the Board shall specify, by rule, in order to pro-
 8 vide for consistent and equitable treatment of
 9 such companies.”; and

10 (2) by striking subsections (b) through (e) and
 11 inserting the following:

12 “(b) CONCENTRATION LIMIT.—A financial company
 13 may not hold more than 10 percent of the total consoli-
 14 dated liabilities of all financial companies.

15 “(c) REQUIRED DISPOSITION.—The Board shall re-
 16 quire any financial company having liabilities in violation
 17 of this section to sell or otherwise transfer liabilities to
 18 unaffiliated firms to bring the company into compliance
 19 with this section.

20 “(d) RULEMAKING AND GUIDANCE.—The Board
 21 shall issue regulations implementing this section, including
 22 the definition of terms, as necessary. The Board may issue
 23 interpretations or guidance regarding the application of
 24 this section to an individual financial company or to finan-
 25 cial companies in general.”.

1 **SEC. 4. LEVERAGE RATIO AND SIZE REQUIREMENTS FOR**
 2 **BANK HOLDING COMPANIES.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.
 4 1841 et seq.) is amended by inserting after section 5 the
 5 following:

6 **“SEC. 5A. LIMITS ON LEVERAGE AND SIZE.**

7 **“(a) LEVERAGE RATIO REQUIREMENTS FOR BANK**
 8 **HOLDING COMPANIES AND FINANCIAL COMPANIES.—**

9 **“(1) LEVERAGE RATIO.—**

10 **“(A) IN GENERAL.—**No bank holding com-
 11 pany with total consolidated assets equal to or
 12 greater than \$50,000,000,000 or nonbank fi-
 13 nancial company supervised by the Board may
 14 maintain tangible common equity in an amount
 15 less than 10 percent of average total consoli-
 16 dated assets.

17 **“(B) AVERAGE TOTAL CONSOLIDATED AS-**
 18 **SETS.—**For purposes of this paragraph, average
 19 total consolidated assets shall include all off-
 20 balance-sheet assets, including financings of as-
 21 sets for which the issuer has more than mini-
 22 mal economic or reputational risks or rewards.

23 **“(2) EXEMPTIONS.—**

24 **“(A) IN GENERAL.—**The Board may ad-
 25 just the leverage ratio requirements provided in
 26 paragraph (1) for any class of institutions,

1 based upon the size or activity of such class of
2 institutions. No adjustment made under this
3 subparagraph may allow an institution to carry
4 less tangible common equity than provided in
5 paragraph (1).

6 “(B) AUTHORITY OF OTHER REGU-
7 LATORS.—

8 “(i) IN GENERAL.—The appropriate
9 Federal regulator may, in a manner con-
10 sistent with this subsection, grant any
11 bank holding company an emergency tem-
12 porary exemption from the ratio require-
13 ments provided in paragraph (1) or (2),
14 where necessary to prevent an imminent
15 threat to the financial stability of the
16 United States.

17 “(ii) PUBLICATION REQUIRED.—Any
18 exemption granted under this subpara-
19 graph shall be published in the Federal
20 Register within a reasonable period after
21 the date on which such exemption is grant-
22 ed, not to exceed 90 days, and such publi-
23 cation shall provide—

1 “(I) the name of the bank hold-
2 ing company or financial company
3 being granted an exemption;

4 “(II) the reason for the exemp-
5 tion; and

6 “(III) the plan of the appropriate
7 Federal regulator detailing the man-
8 ner by which the bank holding com-
9 pany shall be brought into compliance
10 with paragraphs (1) and (2).

11 “(3) LEVERAGE RATIO REQUIREMENTS FOR OP-
12 ERATING SUBSIDIARIES OF BANK HOLDING COMPA-
13 NIES AND NONBANK FINANCIAL COMPANIES SUPER-
14 VISED BY THE BOARD.—For bank holding compa-
15 nies with total consolidated assets equal to or great-
16 er than \$50,000,000,000 and nonbank financial
17 companies supervised by the Board, the Board may
18 promulgate regulations establishing a leverage ratio,
19 in a manner consistent with paragraph (1), for all
20 operating subsidiaries that are not insured deposi-
21 tory institutions.

22 “(4) PROMPT CORRECTIVE ACTION.—

23 “(A) AUTHORITIES.—The Board shall re-
24 quire any bank holding company with total con-
25 solidated assets equal to or greater than

1 \$50,000,000,000 or nonbank financial company
2 supervised by the Board that is in violation of
3 paragraph (1) to raise capital, sell or otherwise
4 transfer assets, liabilities, or off-balance-sheet
5 items to unaffiliated firms, or impose conditions
6 on the manner in which the bank holding com-
7 pany conducts 1 or more activities to bring the
8 company into compliance with paragraph (1).

9 “(B) CORRECTIVE ACTION PLAN.—The
10 Board shall, not later than 60 days after deter-
11 mining that a bank holding company or finan-
12 cial company is in violation of paragraph (1),
13 present to the members of the Committee on
14 Banking, Housing, and Urban Affairs of the
15 Senate and the Committee on Financial Serv-
16 ices of the House of Representatives a plan de-
17 tailing the manner by which the bank holding
18 company or financial company shall be brought
19 into compliance with the applicable provision of
20 law.

21 “(C) REPORTS TO CONGRESS.—

22 “(i) WRITTEN REPORTS.—The Board
23 shall provide to the members of the Com-
24 mittee on Banking, Housing, and Urban
25 Affairs of the Senate and the Committee

on Financial Services of the House of Representatives periodic reports for each 60-day period during which a corrective action plan required by subparagraph (B) has not been fulfilled.

“(ii) TESTIMONY.—The Board shall provide testimony to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives for each 90-day period that a corrective action plan required by subparagraph (B) has not been fulfilled.

“(b) LIMITS ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES AND NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—

“(1) BANK HOLDING COMPANIES.—

“(A) LIMIT ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES.—No bank holding company may possess nondeposit liabilities exceeding 2 percent of the annual gross domestic product of the United States.

“(B) DETERMINATION OF GROSS DOMESTIC PRODUCT.—The annual gross domestic product of the United States shall be deter-

1 mined for purposes of subparagraph (A) using
2 the average of such product over the 16 cal-
3 endar quarters, as calculated by the Bureau of
4 Economic Analysis of the Department of Com-
5 merce, most recently completed as of the time
6 of the determination.

7 “(C) OFF-BALANCE-SHEET LIABILITIES.—

8 The computation of the limit under this para-
9 graph shall take into account off-balance-sheet
10 liabilities, including any liabilities used to fi-
11 nance assets for which the issuer has more than
12 minimal economic or reputational risks or re-
13 wards.

14 “(D) TREATMENT OF INSURANCE COMPA-

15 NIES.—Notwithstanding the liability limit es-
16 tablished in this section, the Board may set a
17 separate liability limit with respect to certain
18 bank holding companies primarily engaged in
19 the business of insurance, as the Board deems
20 necessary in order to provide for consistent and
21 equitable treatment of such institutions. In es-
22 tablishing such separate liability limits for in-
23 surance companies, for any insurance company
24 with any subsidiary regulated by a State insur-

1 ance regulator, the Board shall consult the ap-
 2 propriate State insurance regulator.

3 “(E) TREATMENT OF FOREIGN DEPOS-
 4 ITS.—Notwithstanding the definition of the
 5 term ‘nondeposit liabilities’ established in this
 6 section, the Board may exclude from its calcula-
 7 tion of nondeposit liabilities any foreign and
 8 other deposits not covered by the definition of
 9 the term ‘FDIC-assessed deposits’, if the Board
 10 deems such action necessary to ensure the con-
 11 sistent and equitable treatment of institutions
 12 with international operations.

13 “(2) NONBANK FINANCIAL COMPANIES SUPER-
 14 VISED BY THE BOARD.—

15 “(A) LIMIT ON NONDEPOSIT LIABILITIES
 16 FOR NONBANK FINANCIAL COMPANIES SUPER-
 17 VISED BY THE BOARD.—No nonbank financial
 18 company supervised by the Board may possess
 19 nondeposit liabilities exceeding 3 percent of the
 20 annual gross domestic product of the United
 21 States.

22 “(B) DETERMINATION OF GROSS DOMES-
 23 TIC PRODUCT.—The annual gross domestic
 24 product of the United States shall be deter-
 25 mined for purposes of subparagraph (A) using

1 the average of such product over the 16 cal-
2 endar quarters, as calculated by the Bureau of
3 Economic Analysis of the Department of Com-
4 merce, most recently completed as of the time
5 of the determination.

6 “(C) OFF-BALANCE-SHEET LIABILITIES.—

7 The computation of the limit under this para-
8 graph shall take into account off-balance-sheet
9 liabilities, including any liabilities used to fi-
10 nance assets for which the issuer has more than
11 minimal economic or reputational risks or re-
12 wards.

13 “(D) TREATMENT OF INSURANCE COMPA-

14 NIES.—Notwithstanding the liability limit es-
15 tablished by this paragraph, the Board may set
16 a separate liability limit with respect to insur-
17 ance companies or other financial companies, as
18 the Board determines necessary in order to pro-
19 vide for consistent and equitable treatment of
20 such institutions. In establishing such separate
21 liability limits for insurance companies, for any
22 insurance company with any subsidiary regu-
23 lated by a State insurance regulator, the Board
24 shall consult with the appropriate State insur-
25 ance regulator.

1 “(E) TREATMENT OF FOREIGN DEPOS-
 2 ITS.—Notwithstanding the definition of the
 3 term ‘nondeposit liabilities’ established in this
 4 section, the Board may exclude from its calcula-
 5 tion of nondeposit liabilities any foreign and
 6 other deposits not covered by the definition of
 7 the term ‘FDIC-assessed deposits’, if the Board
 8 deems such action necessary to ensure the con-
 9 sistent and equitable treatment of institutions
 10 with international operations.

11 “(3) PROMPT CORRECTIVE ACTION.—

12 “(A) AUTHORITIES.—The Board shall re-
 13 quire any bank holding company or financial
 14 company that is in violation of a provision of
 15 paragraph (1) or (2), as applicable, to sell or
 16 otherwise transfer assets, liabilities or off-bal-
 17 ance-sheet items to unaffiliated firms, to termi-
 18 nate 1 or more activities, or to impose condi-
 19 tions on the manner in which the bank holding
 20 company or financial company conducts 1 or
 21 more activities to bring the company into com-
 22 pliance with paragraphs (1) or (2), as applica-
 23 ble.

24 “(B) CORRECTIVE ACTION PLAN.—The
 25 Board shall, not later than 60 days after deter-

1 mining that a bank holding company or finan-
 2 cial company is in violation of paragraph (1) or
 3 (2), present to the members of the Committee
 4 on Banking, Housing, and Urban Affairs of the
 5 Senate and the Committee on Financial Serv-
 6 ices of the House of Representatives a plan de-
 7 tailing the manner by which the bank holding
 8 company or financial company shall be brought
 9 into compliance with the applicable provision.

10 “(C) REPORTS TO CONGRESS.—

11 “(i) WRITTEN REPORTS.—The Board
 12 shall provide to the members of the Com-
 13 mittee on Banking, Housing, and Urban
 14 Affairs of the Senate and the Committee
 15 on Financial Services of the House of Rep-
 16 resentatives periodic reports for each 60-
 17 day period during which a corrective action
 18 plan required by subparagraph (B) has not
 19 been fulfilled.

20 “(ii) TESTIMONY.—The Board shall
 21 provide testimony to the Committee on
 22 Banking, Housing, and Urban Affairs of
 23 the Senate and the Committee on Finan-
 24 cial Services of the House of Representa-
 25 tives for each 120-day period during which

1 a corrective action plan required by sub-
2 paragraph (B) has not been fulfilled.

3 “(c) DEFINITIONS.—As used in this section—

4 “(1) the term ‘appropriate Federal regulator’
5 means—

6 “(A) the Board of Governors of the Fed-
7 eral Reserve System (in this Act referred to as
8 the ‘Board’);

9 “(B) the Comptroller General of the
10 United States (in this Act referred to as the
11 ‘Comptroller’; or

12 “(C) the Federal Deposit Insurance Cor-
13 poration (in this Act referred to as the ‘Cor-
14 poration’);

15 “(2) the term ‘average total consolidated assets’
16 has the same meaning as in part 225 of title 12,
17 Code of Federal Regulations, as in effect on the date
18 of enactment of this Act, or any successor thereto;

19 “(3) the term ‘FDIC-assessed deposits’ means
20 the assessment base, as computed under part 327 of
21 title 12, Code of Federal Regulations, as in effect on
22 the date of enactment of this Act, or any successor
23 thereto;

24 “(4) the term ‘liabilities’ equals a financial com-
25 pany’s total assets less tier 1 capital;

1 “(5) the term ‘nondeposit liabilities’ means the
2 total assets of a bank holding company, less tier 1
3 capital, less FDIC-assessed deposits;

4 “(6) the term ‘foreign nonbank financial com-
5 pany’ means a company (other than a company that
6 is, or is treated in the United States, as a bank
7 holding company or a subsidiary thereof) that is—

8 “(A) incorporated or organized in a coun-
9 try other than the United States; and

10 “(B) substantially engaged in, including
11 through a branch in the United States, activi-
12 ties in the United States that are financial in
13 nature (as defined in section 4(k) of the Bank
14 Holding Company Act of 1956);

15 “(7) the term ‘U.S. nonbank financial company’
16 means a company (other than a bank holding com-
17 pany or a subsidiary thereof) that is—

18 “(A) incorporated or organized under the
19 laws of the United States or any State; and

20 “(B) substantially engaged in activities in
21 the United States that are financial in nature
22 (as defined in section 4(k) of the Bank Holding
23 Company Act of 1956);

1 “(8) the term ‘nonbank financial company’
 2 means a U.S. nonbank financial company and a for-
 3 eign nonbank financial company;

4 “(9) the term ‘tangible common equity’ means
 5 qualifying common stockholders’ equity plus retained
 6 earnings; and

7 “(10) the term ‘tier 1 capital’ has the same
 8 meaning as in part 225 of title 12, Code of Federal
 9 Regulations, as in effect on the date of enactment of
 10 this section, or any successor thereto.”.

11 **SEC. 5. EFFECTIVE DATE.**

12 (a) IN GENERAL.—This Act and the amendments
 13 made by this Act shall take effect upon the date of enact-
 14 ment of this Act.

15 (b) ALLOWANCE FOR BANK HOLDING COMPANIES
 16 AND FINANCIAL COMPANIES NOT IN COMPLIANCE AT
 17 DATE OF ENACTMENT.—Any institution that is in viola-
 18 tion of—

19 (1) the deposit concentration limit in section
 20 3(d)(2)(A) of the Bank Holding Act of 1956, as
 21 amended by this Act, as of the date of enactment of
 22 this Act, shall bring itself into compliance with that
 23 limit not later than 1 year after the date of enact-
 24 ment of this Act;

1 (2) the concentration limit in section 14 of the
2 Bank Holding Company Act of 1956, as amended by
3 this Act, as of the date of enactment of this Act,
4 shall bring itself into compliance with that limit not
5 later than 1 year after the date of enactment of this
6 Act;

7 (3) the leverage ratios in section 5A of the
8 Bank Holding Act of 1956, as amended by this Act,
9 as of the date of enactment of this Act, shall bring
10 itself into compliance with those ratios, not later
11 than 1 year after the date of enactment of this Act;
12 and

13 (4) the limits on nondeposit liabilities in section
14 7A of the Bank Holding Company Act of 1956, as
15 added by this Act, as of the date of enactment of
16 this Act, shall bring itself into compliance with those
17 limits, not later than 3 years after the date of enact-
18 ment of this Act.

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